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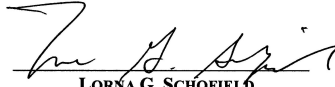
Akin

CONO A. CARRANO
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ccarrano@akingump.com

August 19, 2024

VIA ELECTRONIC COURT FILING

Honorable Lorna G. Schofield
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Application granted. Defendant's time to answer or respond to the Complaint is extended to **September 23, 2024**. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 26.

Dated: August 19, 2024
New York, New York

Re: No. 24 CV 5834 (LGS), *The Continuum Group, LLP v. 666 Performance, LLC d/b/a "Continuum" and "Continuum Club"*, Request for Extension of Time

Dear Honorable Judge Schofield:

I write on behalf of Defendant 666 Performance, LLC in the above-captioned action and pursuant to Rules I.B.2 and I.B.3 of Your Honor's Individual Rules and Procedures for Civil Cases. Defendant respectfully requests a 30-day extension of Defendant's responsive pleading deadline, to and including September 23, 2024.

Defendant's current deadline to respond to the Complaint is August 22, 2024. *See* ECF No. 6 (Affidavit of Service). Defendant requests a 30-day extension to and including September 23, 2024. This is Defendant's first request for an extension and, therefore, no prior requests have been ruled upon. The reason for the extension is to allow Defendant sufficient time to prepare its response to the Complaint.

As reflected in this excerpt of an email exchange with Plaintiff's counsel Wesley M. Mullen, Plaintiff's counsel would only agree to this extension if Defendant agreed to continue with discovery on the dates proposed by Plaintiff:

Hi Cono,

Plaintiff would consent to extend the answer date by 30 days on the condition that Defendant agree to proceed with discovery during the extension.

We propose to exchange FRCP 26(a)(1) initial disclosures on August 23; to confer per FRCP 26(f) by August 26; and to stipulate to waive the timing restrictions under FRCP 26(d)(1).

Wes

Ex. A, 8/16/24 E-mail of W. Mullen. Defendant does not agree to these conditions and believes them to be improper grounds to withhold a routine request for a modest extension of time.

Honorable Lorna G. Schofield

August 19, 2024

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The parties are also scheduled to be before the Court on August 22, 2024, in connection with Plaintiff's Motion for a temporary restraining order and preliminary injunction ("Plaintiff's TRO/PI Motion"). And the Court has set an initial status conference for September 18, 2024, which Defendant may move this Court to adjourn or continue depending on the Court's ruling on Plaintiff's TRO/PI Motion.

Thank you for your consideration of this request.

Dated: August 19, 2024
Washington, D.C.

Respectfully submitted,

Cono A. Carrano

Cono A. Carrano

AKIN GUMP STRAUSS HAUER & FELD

Robert S. Strauss Tower

2001 K Street, N.W.

Washington, DC 20006

Enclosure

August 19, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2024, I electronically filed the foregoing Defendant's Letter Motion Regarding Extension of Time to Respond to Responsive Pleading using the CM/ECF system, which sent electronic or other notification of such filing to all counsel of record in this case.

/s/ Cono A. Carrano
Cono A. Carrano

EXHIBIT

A

Baker, Marshall

From: Carrano, Cono
Sent: Friday, August 16, 2024 12:23 PM
To: Wesley Mullen
Cc: Lee, David (Washington, DC); Akarapu, Sunny; Moshe Lapin; Martin Arms; Vincent FitzPatrick; Bee Echauz; Ari Keller; AG-666PERFORMANCE-CONTINUUM
Subject: RE: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Wes,

Thank you. Yes, we will.

Best, Cono

Cono A. Carrano

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Mobile: [+1 202.285.1607](tel:+1202.285.1607)

From: Wesley Mullen <wmullen@mullenpc.com>
Sent: Friday, August 16, 2024 2:22 PM
To: Carrano, Cono <ccarrano@AKINGUMP.com>
Cc: Lee, David (Washington, DC) <dlee@AKINGUMP.com>; Akarapu, Sunny <sakarapu@akingump.com>; Moshe Lapin <moshe@lapinlegal.com>; Martin Arms <marms@mullenpc.com>; Vincent FitzPatrick <vfitzpatrick@mullenpc.com>; Bee Echauz <bechauz@mullenpc.com>; Ari Keller <akeller@mullenpc.com>; AG-666PERFORMANCE-CONTINUUM <AG-666PERFORMANCE-CONTINUUM@akingump.com>
Subject: Re: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Thanks. Please include my response in full.

Wesley M. Mullen
MULLEN P.C.
745 Fifth Avenue #500
New York, NY 10151
(646) 632-3718
wmullen@mullenpc.com

www.mullenpc.com

On Fri, Aug 16, 2024 at 2:04 PM Carrano, Cono <ccarrano@akingump.com> wrote:

Wes,

Unless we hear from you by 4:00 ET today, we'll inform the Court that your client opposes.

Thank you.

Best, Cono

Cono A. Carrano

Akin

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From: Wesley Mullen <wmullen@mullenpc.com>
Sent: Friday, August 16, 2024 10:45 AM
To: Carrano, Cono <ccarrano@AKINGUMP.com>
Cc: Lee, David (Washington, DC) <dlee@AKINGUMP.com>; Akarapu, Sunny <sakarapu@akingump.com>; Moshe Lapin <moshe@lapinlegal.com>; Martin Arms <marms@mullenpc.com>; Vincent FitzPatrick <vfitzpatrick@mullenpc.com>; Bee Echauz <bechauz@mullenpc.com>; Ari Keller <akeller@mullenpc.com>; AG-666PERFORMANCE-CONTINUUM <AG-666PERFORMANCE-CONTINUUM@akingump.com>
Subject: Re: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Hi Cono,

Plaintiff would consent to extend the answer date by 30 days on the condition that Defendant agree to proceed with discovery during the extension.

We propose to exchange FRCP 26(a)(1) initial disclosures on August 23; to confer per FRCP 26(f) by August 26; and to stipulate to waive the timing restrictions under FRCP 26(d)(1).

Wes

Wesley M. Mullen

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On Fri, Aug 16, 2024 at 9:52 AM Carrano, Cono <ccarrano@akingump.com> wrote:

Wesley,

Please let us know by 2:00 PM ET today our client's position regarding extending our answer/response date to the complaint by 30 days. See below. If we don't hear from you by then, we'll note your non-response in our application to the Court.

Thank you.

Best, Cono

Cono A. Carrano

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Mobile: [+1 202.285.1607](tel:+1202.285.1607)

From: Wesley Mullen <wmullen@mullenpc.com>

Sent: Tuesday, August 6, 2024 11:16 AM

To: Carrano, Cono <ccarrano@AKINGUMP.com>

Cc: Lee, David (Washington, DC) <dlee@AKINGUMP.com>; Akarapu, Sunny <sakarapu@akingump.com>; Moshe Lapin <moshe@lapinlegal.com>; Martin Arms <marms@mullenpc.com>; Vincent FitzPatrick <vfitzpatrick@mullenpc.com>; Bee Echauz <bechauz@mullenpc.com>; Ari Keller <akeller@mullenpc.com>

Subject: Re: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Thank you, Cono. If you have any earlier availability, please let me know -- I do not expect the Court to wait 8 days to address the TRO application.

I will confer with Continuum and revert about the response date. Given the ongoing irreparable harm, I suspect Continuum will wait to hear how the Court intends to address the emergency request before extending any timelines. No discourtesy intended.

Wesley M. Mullen

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On Tue, Aug 6, 2024 at 10:59 AM Carrano, Cono <ccarrano@akingump.com> wrote:

Hi Wes,

Our client does not consent to any such relief.

We are generally available August 14-16 for a Court teleconference.

Please confirm that your client does not oppose a 30-day extension for our answer/response to the complaint.

Thank you.

Best, Cono

On Aug 6, 2024, at 7:16 AM, Wesley Mullen <wmullen@mullenpc.com> wrote:

****EXTERNAL Email****

Counsel,

I am following up on my below email of August 2.

Please let me know if your client consents to Plaintiff's proposed temporary relief or any portion thereof. (IRP III.C.4.)

Please also let me know your availability for a telephone conference with the Court "in the next few days." (*Id.*)

Kind regards,

Wesley M. Mullen

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New York, NY 10151

(646) 632-3718

wmullen@mullenpc.com

www.mullenpc.com

On Fri, Aug 2, 2024 at 12:15 PM Wesley Mullen <wmullen@mullenpc.com> wrote:

Counsel, please see below.

Wesley M. Mullen

MULLEN P.C.

745 Fifth Avenue #500
New York, NY 10151

(646) 632-3718

wmullen@mullenpc.com

www.mullenpc.com

----- Forwarded message -----

From: **Moshe Lapin** <moshe@lapinlegal.com>

Date: Fri, Aug 2, 2024 at 11:09 AM

Subject: RE: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

To: Wesley Mullen <wmullen@mullenpc.com>

Cc: Vincent FitzPatrick <vfitzpatrick@mullenpc.com>, Martin Arms

<marms@mullenpc.com>, Bee Echauz <bechauz@mullenpc.com>

Good morning Wes,

I am not representing 666 Performance, LLC in the litigation. Please direct all communications relating to this matter to the following individuals who are representing 666 Performance, LLC:

David Lee: dlee@AKINGUMP.com

Cono Carrano: ccarrano@akingump.com and

Sunny Akarapu: sakarapu@akingump.com

Thank you,

Moshe

Moshe D. Lapin

LAPIN LAW FIRM

295 MADISON AVE., 12TH FLOOR
NEW YORK, NY 10017
PHONE: 212-858-0363
FAX: 212-320-0248
Moshe@LapinLegal.com

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From: Wesley Mullen <wmullen@mullenpc.com>
Sent: Friday, August 2, 2024 10:45 AM
To: Moshe Lapin <moshe@lapinlegal.com>
Cc: Vincent FitzPatrick <vfitzpatrick@mullenpc.com>; Martin Arms <marms@mullenpc.com>; Bee Echauz <bechauz@mullenpc.com>
Subject: Re: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Dear Moshe,

Personal service of the summons and complaint was made yesterday. I attach a courtesy copy of the file-stamped proof of service.

I. Notice Pursuant to FRCP 65

Pursuant to Fed. R. Civ. P. 65(a) and (b) and to Rule III.C.4 of Judge Schofield's Individual Rules and Procedures, I write to notify you that Plaintiff The Continuum Group, LLC intends to seek a TRO and Preliminary Injunction temporarily and preliminarily enjoining Defendant 666 Performance, LLC d/b/a Continuum (and all persons within the scope of Fed. R. Civ. P. 65(d)(2)) from engaging in the acts described at Paragraph 4 of the Prayer For Relief set forth at pages 22 to 23 of the Complaint (ECF Doc. 1), including:

(1) using Plaintiff's CONTINUUM and CONTINUUM CLUB marks to identify any goods, services or businesses not authorized by Plaintiff; and

(2) using any of Plaintiff's trademarks or other rights, including but not limited to Plaintiff's CONTINUUM and CONTINUUM CLUB marks, or any other marks (including CNTM) that are confusingly or substantially similar to Plaintiff's Marks, on or in connection with Defendant's advertising, marketing, promoting, distributing, displaying, offering for sale, selling, operating and/or otherwise dealing in goods or services, or engaging in business, not authorized by Plaintiff; and

(3) engaging in any act which is likely to cause confusion or mistake, or to deceive, members of the public as to the affiliation, connection or association of any goods, services or business(es) advertised, marketed, promoted, distributed, displayed, operated, offered for sale or sold by Defendant with Plaintiff, and/or as to the origin, sponsorship or approval of any product, service or business advertised, marketed, promoted, distributed, displayed, operated, offered for sale or sold by Defendant with Plaintiff; or

(4) instructing, aiding or abetting any other person or entity in engaging in or performing any of the foregoing acts.

II. Requests

Please let me know if your client consents to the foregoing temporary relief or any portion thereof. (IRP III.C.4.)

Case 1:24-cv-05884-CG Document 28 Filed 08/20/24 Page 4 of 6
Please also let me know your availability for a telephone conference with the Court on Monday and Tuesday, August 5 or 6. (*Id.*)

III. Conclusion

If you do not represent Defendant in connection with this case, please let me know.

If we ought to contact other counsel for the Defendant regarding the forthcoming application, please immediately forward this email with regards.

As before, if a discussion might assist our clients in resolving this matter -- or might obviate motion practice -- I remain available. You can reach me by email any time, and I'll be on my cell over the weekend: (203) 980-9588. Please feel free to text or call.

Wes

Wesley M. Mullen

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New York, NY 10151

(646) 632-3718

wmullen@mullenpc.com

www.mullenpc.com

On Wed, Jul 31, 2024 at 8:10 PM Moshe Lapin <moshe@lapinlegal.com> wrote:

Good evening Wes. I have not been authorized to accept service.

From: Wesley Mullen <wmullen@mullenpc.com>

Sent: Wednesday, July 31, 2024 7:58 PM

To: Moshe Lapin <moshe@lapinlegal.com>

Cc: Vincent FitzPatrick <vfitzpatrick@mullenpc.com>; Martin Arms <marms@mullenpc.com>; Bee Echauz <bechauz@mullenpc.com>

Subject: The Continuum Group LLC v. 666 Performance, LLC, No. 24 CV 5834

Moshe,

Please see attached. Let me know if you're authorized to accept service. We're obliged to effect it quickly in advance of the forthcoming application.

Wes

Wesley M. Mullen

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